

Dr T E Tew FRSA FBS MIEEM  
Chief Executive  
The Environment Bank  
By email to: [tomtew@environmentbank.com](mailto:tomtew@environmentbank.com)

30 November 2012

Dear Tom

## **MEDWAY CORE STRATEGY – LODGE HILL STRATEGIC ALLOCATION: BIODIVERSITY OFFSETTING REPORT (FINAL DRAFT)**

1. This submission is made by CBRE Ltd on behalf of Land Securities, in response to Medway Council's email of 14<sup>th</sup> November 2012 seeking comments on the Environment Bank's final draft Biodiversity Offsetting Report. This submission incorporates technical input from Thomson Ecology. As instructed, we have copied this letter to Officers at Medway Council.
2. By way of context, it is important to acknowledge that there are two distinct workstreams relevant to nightingales associated with Lodge Hill. The work that has been undertaken to date by EBL seeks, in accordance with the Inspector's requirement set out in her letter to Medway Council of 27<sup>th</sup> July 2012, to address the issues associated with demonstrating whether there is a reasonable prospect that adequate compensatory habitat could be established, in the context of the Core Strategy. In this context, Land Securities supports the conclusions of the EBL report. However, it is important to clarify that this process is distinct from the process of defining the precise details pertaining to Medway Council's consideration of the outline planning application (OPA) for Lodge Hill.
3. We support the process that has been undertaken by EBL (herein referred to as the 'nightingale process'). This has culminated in EBL applying professional judgement to identify a conservative scale of compensatory habitat for nightingales as a consequence of aggregating a series of precautionary assumptions. We support the conclusion reached by EBL that there are reasonable prospects of achieving compensatory habitat in Kent, and we think that this conservative approach adds to the rigour of this conclusion and provides the necessary comfort that is needed for the purposes of the Core Strategy.
4. The nightingale process has helpfully defined a logic based on the DEFRA metrics that will, at the appropriate stage, be applied in detail to the OPA for Lodge Hill, and secured through appropriate planning mechanisms (planning conditions and obligations). This will facilitate a necessary process of refinement specific to the Lodge Hill OPA, in consultation with Medway Council and Natural England. This will allow the actual (absolute) provision to be defined, firmly cognisant of the need for obligations to meet with the statutory CIL Regulation 122 tests.

5. Habitat creation and restoration projects are planned and delivered routinely in the UK, and have been for many years – including on sites and habitats of much greater complexity than is being contemplated at Lodge Hill. There is every reason to have confidence that a sound and effective offsetting strategy, which is based upon the logic set out in the EBL report, can be agreed with Medway Council and Natural England, and secured through the appropriate planning mechanisms.
6. We have summarised below Land Securities' key 'principle' observations on the report; detailed observations are described within the enclosed schedule. We are not intending to provoke amendments to the EBL report at this stage, given that we think it achieves the objectives required for the Core Strategy. However, we do expect these observations to be brought to bear as part of the evolution of the detailed mitigation strategy for Lodge Hill as it pertains to the OPA.
7. **Efficacy of data:** the report makes a number of assumptions about the relative importance of Lodge Hill for nightingales in the national context. Considerable doubt has been cast regarding the efficacy and robustness of the national nightingale and breeding bird survey data, and these assumptions are therefore conjecture.
8. **Over-Precautionary Approach:** the report is predicated on applying a series of over-precautionary assumptions<sup>1</sup> to the metrics, which are compounded at each stage of the process. This in turn leads to a disproportionately precautionary requirement for compensatory habitat. By way of illustration, the scale of compensatory habitat identified within the report for an Amber-listed species represents a scale of uplift that exceeds what might be accepted when compensatory habitat is required for losses of habitat within Natura 2000 sites (i.e. sites of European importance for nature conservation). Another example is the inclusion of managed grassland and arable habitats within the calculations of habitat loss, and the assignment of high distinctiveness to established woodlands (a sub-optimal habitat for nightingales); an initial calculation suggests that a more realistic and accurate approach on these assumptions alone would reduce the metric requirement by c. 25%.
9. **Assumptions on Uncertainty:** a number of the stakeholders that have been, and continue to be, involved in the nightingale process have referred to the uncertainties that they believe exist in relation to delivering compensatory habitat for nightingales. These views have been expressed from different sources, reflecting a disparate range of objectives, through the nightingale process. The alleged uncertainties have as a consequence been reflected within the multipliers. However, given the extensive work that has been undertaken through the nightingale process, augmented by input from the UK's leading experts on the species, more realistic assumptions could be applied; in our view, there is only one uncertainty, and that's whether – ultimately – nightingales would take up residence of the new habitat, and from what's known about the behaviour of nightingales

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<sup>1</sup> For example, assumptions on the extent of nightingale habitat, the loss of all habitat through development, the abandonment of the site by nightingales, habitat condition, habitat distinctiveness, proximity to development, using location data from all three survey years, length of time to achieve target habitat condition, the requirement for sites to meet all of the criteria, the assumption that the same uncertainties will apply to all receptor sites, the on and off site mitigation that has not been taken into account/acknowledged in any way

(not least that they are opportunistic) we should be reasonably confident that this will happen. As we have articulated above, this is a further example of why the Inspector should be confident that reasonable prospects exist.

10. **Lack of balance:** the assumptions that have been used within the report are not consistent with the hard evidence 'on the ground'. For example, the Lodge Hill site provides unequivocal evidence that nightingales exist in close proximity to development, which is accepted by the BTO. Based on the 2012 BTO data, nightingale territories are located in very close proximity to roads (including the main vehicular military access road), concrete crushers, military activity, and housing. Yet in assessing potentially suitable areas to deliver offsetting ('receptor' sites), the report confirms that one criterion requires a minimum distance of 500m between the site and developed areas. Another example is the assumption (in calculating habitat lost) that the existing woodland and grassland provides habitat for nightingales, and yet these habitats have been discounted in terms of considering potential receptor sites. In our view, there is a discrepancy in the process in terms of the application of criteria to assess the impact of the development on nightingales, and the application of criteria to identify potentially suitable receptor sites. An equitable approach is required through the process of refinement.
11. **Full Spectrum of Scenarios:** through the nightingale process, various attempts have been made by a number of stakeholders to reflect a range of over-precautionary scenarios within the report. As a consequence, the report includes a paragraph that tests one alternative (more onerous) assumption around the distinctiveness of the habitat. The EBL report is based on a series of assumptions, adjustments to which will result in alternative compensatory requirements. However, it is not the role of the EBL report to attempt to capture the full spectrum of scenarios. It should – as it does – set out one scenario based on a series of conservative assumptions, based on application of EBL's professional judgement and expertise.
12. **The Principle of Temporal Lag:** the issue of temporal lag has attracted considerable debate over the course of the nightingale process. The last paragraph under 'Temporal Loss of Habitat – Delivery Lag' section does not, in our view, fairly reflect the balanced nature of the debate. In the context of understanding the behavioural characteristics of nightingales we, alongside the significant stakeholders, accepted the principle of temporal lag, the temporary impacts being less important than the long-term impacts. It is Government policy that temporal lag is permissible in certain circumstances, such as when it takes time for new habitats to reach maturity. It is also important to note that the time between loss of existing habitat and the readiness of the new habitat will be minimised, and that the temporary loss of habitat is not certain to have a population level effect, since there may be adequate alternative habitat available.
13. **Phasing of Development:** the report makes no reference to the fact that Lodge Hill would be developed on a phased basis. Yet this is fundamental, and intrinsically linked, to the principle of temporal lag. Based on the 2012 BTO data, around 12 nightingale territories would be directly impacted by the first phase of Lodge Hill (i.e. the developable area within Phase 1). This amounts to less than 18% of the total number of nightingale territories within the Lodge Hill Strategic Allocation identified by the BTO; the remaining territories located within the developable area are in the later phases of development, when the issue of temporal lag will be substantially reduced. This illustrates the necessary sense of

proportion that is required through a process of refinement, underpinned by Land Securities' commitment to use best endeavours to deliver compensatory habitat as early in the development programme as possible, which could include some degree of 'frontloading' subject to the statutory CIL 122 tests.

14. Land Securities fully accepts the principle of mitigating any impacts that arise as a consequence of the development. They also accept the principle of the DEFRA metrics at Lodge Hill, as a means of establishing the nature and extent of potential compensatory habitat for nightingales. However, Land Securities' agreement to this process has consistently been made on a 'without prejudice' basis to the views that they have expressed to date, both to the Core Strategy Inspector and to Natural England, regarding what seems to be a wholly disproportionate response to a species of this status within the UK. Within the recently published State of the UK's Birds 2012<sup>2</sup> report (prepared by, amongst others, Natural England, RSPB and the BTO), nightingales are listed as a common and widespread species which is one of 126 species of moderate concern. It is not listed as a priority species. This is an important contextual point, quite distinct from EBL's remit and the work that they have undertaken as a consequence.
15. Delivering the necessary and appropriate scale of compensatory nightingale habitat for Lodge Hill would set the conditions to allow the local nightingale population to endure and, it is hoped, thrive in the long-term. The EBL report demonstrates beyond any reasonable doubt that reasonable prospects exist that the compensatory habitat can be achieved.

Yours sincerely,



**LIZ MASON**  
**DIRECTOR**

c.c C. Smith, Medway Council (c/o [ldf@medway.gov.uk](mailto:ldf@medway.gov.uk))  
P. Howarth, Defence Infrastructure Organisation  
S. Neal, Land Securities

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<sup>2</sup> **The State of the UK's Birds 2012**, RSPB, BTO, WWT, Countryside Council for Wales, Natural England, Department of the Environment (Northern Ireland), Northern Ireland Environment Agency, Scottish Natural Heritage and the JNCC

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Comment Reference	Section of EBL Report	Land Securities' Comments
1	Section 1, 1 <sup>st</sup> paragraph	We note that the paragraph could usefully clarify that EBL's remit is in the context of the Core Strategy Strategic Allocation, and not the OPA
2	Section 1, 2 <sup>nd</sup> paragraph	We note that the reference to the British nightingale population having 'declined considerably' is not qualified
3	Section 1, 3 <sup>rd</sup> paragraph	We note that the survey results referred to relate to Lodge Hill only, as part of a national survey in relation to which the results have not yet been published
4	Section 1, 4 <sup>th</sup> paragraph	We note that the DEFRA guidance confirms that LPAs that are not participating in the pilot may be able to use the offsetting mechanism (paragraph 6 of the DEFRA guidance)
5	Section 1, 7 <sup>th</sup> paragraph	EBL's independent views should be distinct from, and take precedence over (as the 'arbiter' for the purposes of this Core Strategy-focused process), the views that have been incorporated by various stakeholders through the process
6	Section 1, 8 <sup>th</sup> paragraph, 4 <sup>th</sup> bullet point	Is this referring to the final BTO report? If not, then this advice appears not to have been distributed to the team
7  12	Section 1, 9 <sup>th</sup> paragraph, 1 <sup>st</sup> bullet point  Section 2, Technical Workshop, 2 <sup>nd</sup> paragraph	As the report itself acknowledges, the consideration of all of the semi-natural habitats is precautionary, and in our view, very conservative. For example, managed grassland shouldn't be included within the calculations, and most of the ancient woodlands are unsuitable for nightingales and so should have their condition assessment reduced. An adjustment to the assumptions to reflect just this observation alone – which we think represents a more realistic position – would reduce the credit requirement by in the order of 25%
8	Section 2, BTO Estimation of Offset Required, 1 <sup>st</sup> paragraph	Over the course of this process, various attempts have been made to quantify the nightingale territories that would be lost as a result of the development. It is relevant to note that the Statement of Common Ground prepared by Medway Council, RSPB and the Kent Wildlife Trust identify 53 nightingale territories (singing males) within the Lodge Hill Strategic Allocation site (excluding SSSI)
9	Section 2, 1 <sup>st</sup> paragraph	The sentence <i>'The BTO do not predict that all territories within the development boundary will be lost, but overall estimate that the total number of nightingales lost will be very similar to the total number present within the boundary'</i> appears to us to be contradictory, and clarity is needed on what the 'loss' assumption is (see comment 7 above)
10	Section 2, 2 <sup>nd</sup> paragraph	In order to be consistent with the advice provided by stakeholders at the Technical Workshop, it should be acknowledged that in considering receptor sites, some sites may not require all of the conditions in order to be successful.  It should also be acknowledged that the persistence of nightingales at Lodge Hill is by no means guaranteed and would certainly decline in the absence of management
11	Section 2, 3 <sup>rd</sup> paragraph	We think that it is important that the conclusions of the nightingale process are sense-checked against a proportional logic. If the uncertainties are resolved (and it is important to note that not all of the receptor sites will hold all of the uncertainties), in order to achieve no net loss, the area required to mitigate the loss of nightingale habitat would (assuming the BTO's figure of 65 – although see comment 8 above) equate to 130ha, on the basis of each nightingale territory being 2ha. This is broadly equivalent to the scale of habitat being lost. This provides a degree of perspective and proportion which we think is essential to be reflected in ongoing engagement with Medway Council and Natural England
12	Section 2, Technical Workshop, 3 <sup>rd</sup> paragraph	The assumption that all habitat within the Lodge Hill site will be lost to nightingales is over-cautious
13	Section 2, Stakeholder Meeting, 4 <sup>th</sup> bullet point	Our observations on the principle of temporal lag and the phasing of development are set out in CBRE's letter to EBL dated 30 <sup>th</sup> November 2012
14	Section 2, Stakeholder Meeting, 1 <sup>st</sup> paragraph, 5 <sup>th</sup> bullet point	Stakeholders were more optimistic than this, advising that it is unlikely that there would be an effect at the population level
15	Section 2, Stakeholder Meeting, 1 <sup>st</sup> paragraph, 6 <sup>th</sup> bullet point	The BTO figure of 300-400ha takes into account at least some of the risks by multiplying lost habitats by 2-2.7. This is significantly more than the total area of suitable nightingale habitats present on the site (including areas of

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		Chattenden Woods SSSI, ancient woodlands, coarse grassland and tall ruderal vegetation – 153ha). Indeed, during the Technical Workshop the BTO confirmed that most risks have been factored in to their estimated figure
16	Section 2, Stakeholder Meeting, 1 <sup>st</sup> paragraph, 7 <sup>th</sup> bullet point	Our observations on the spectrum of scenarios are set out in CBRE's letter to EBL dated 30 <sup>th</sup> November 2012
17	Section 2, Stakeholder Meeting – general comments	There are two important points arising through the discussion that are not captured within the summary: <ul style="list-style-type: none"> <li>• A significant stakeholder identified the need for a delivery strategy to be in place prior to development commencement; and</li> <li>• The fact (as evidenced by the Lodge Hill site) that nightingales exist in close proximity to development, which was acknowledged by the BTO. The nightingale population within Lodge Hill are located in very close proximity to roads (including the main vehicular military access road), concrete crushers, military activity, and housing. Our observations on the lack of balance are set out in CBRE's letter to EBL dated 30<sup>th</sup> November 2012</li> </ul>
18	Section 2, Applying DEFRA Metrics to Estimate Compensatory Requirements, 2 <sup>nd</sup> paragraph	See comment 7 – the principles apply in the application of metrics
19	Section 2, Applying DEFRA Metrics to Estimate Compensatory Requirements, 2 <sup>nd</sup> paragraph, 1 <sup>st</sup> bullet point	For the record, this was not agreed at the Stakeholder Workshop
20	Section 2, Applying DEFRA Metrics to Estimate Compensatory Requirements, 2 <sup>nd</sup> paragraph, 2 <sup>nd</sup> bullet point	Using location data from all three years could result in an over-estimate of habitat use in any one year so again this is likely to be over-precautionary
21	Section 2, Applying DEFRA Metrics to Estimate Compensatory Requirements, 3 <sup>rd</sup> paragraph, 2 <sup>nd</sup> bullet point	In our view, the assumption of two category increases is conservative; allowing the receptor sites to increase from low distinctiveness and poor quality to high distinctiveness and good quality would be more realistic and would probably have the effect of reducing the requirements
22	Section 2, Results of Applying DEFRA Metrics, 1 <sup>st</sup> paragraph	The percentages only add up to 95%, not 100%. Does the remaining 5% refer to habitats not included in the assessment? It is clear that the outputs should not be read as absolutes, given that the precise level of provision can only be defined through more detailed discussions at the appropriate stage in the process
23	Section 2, Results of Applying DEFRA Metrics, Table	The table does not include the updated habitat areas, as recorded during the updated Phase 1 habitat survey (i.e. the area of scrub has increased), and we understand that this will be reflected within the final version of the report. The comments in 7 (above) apply, and we're also unclear on what is meant by <i>'*Not inclusive of hedge requirement'</i>
24	Section 2, Results of Applying DEFRA Metrics, 2 <sup>nd</sup> paragraph	Our observations on the spectrum of scenarios are set out in CBRE's letter to EBL dated 30 <sup>th</sup> November 2012
25	Section 3, Potential for Habitat Management to Deliver Offsetting, 1 <sup>st</sup> paragraph, 4 <sup>th</sup> bullet point	As set out in comment 17 (above), nightingales exist in close proximity to development. The Lodge Hill site provides clear, unequivocal evidence that nightingales can inhabit areas within 500m of existing urban areas.  Using the BTO data for nightingales from 1980 and 1999, we have identified 222 nightingale records representing 605 singing males occurring within 400m of a major residential area. The total number of records we have for Kent is 703 representing 2,185 singing males – so roughly a third of all records (and between a quarter and a third of all males) are within 400m of an

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		urban area. Furthermore, the London Bird Report 2008 contains information on breeding nightingales. A total of approximately 25 to 28 nightingale territories appear to have established themselves in Greater London
26	Section 3, Potential for Habitat Management to Deliver Offsetting, 2 <sup>nd</sup> paragraph	There is no mention of extending the search for receptor sites to Essex, although given the physical proximity to the site we consider Essex should be considered in terms of its potential for receptor sites
27	Section 3, Potential for Habitat Management to Deliver Offsetting, 3 <sup>rd</sup> paragraph	This paragraph could usefully make reference to the further detailed work that would be undertaken at the appropriate stage
28	Section 3, Potential for Habitat Management to Deliver Offsetting, 4 <sup>th</sup> paragraph	Considerable work is currently being undertaken on the potential receptor sites. This includes a review of DIO's landholdings, which are extensive in extent and could provide a significant opportunity to deliver mitigation which – in those cases – would remove land ownership constraints
29	Section 2, Temporary Loss of Habitat – Delivery Lag, 2 <sup>nd</sup> paragraph	Planting mature shrub specimens is a method of reducing the delivery lag. Scrub can be planted or translocated using more mature plant specimens (1.5m in height) during November to March to ensure maximum establishment. By planting in clumps with unplanted gaps, scalloped edges and a mix of native species of local provenance, greater diversity with a natural appearance can be achieved. Following planting, rabbit and deer exclusion fencing can be used to protect new growth, followed by pruning in the second growing season and at least the subsequent three seasons to achieve a dense structure. By spraying under the canopy of the scrub, ground vegetation can be suppressed to achieve areas of bare ground. By replacing dead or dying specimens, and regular pruning, a dense stand of scrub can be achieved within 5 years
30	Section 2, Temporary Loss of Habitat – Delivery Lag, 4 <sup>th</sup> paragraph	There is no reliable estimate of the extent of nightingale decline and due to doubts with the 1999 nightingale survey and small sample size used in the breeding bird survey, any decline may not be as steep as has been suggested. This means that there is also doubt over the importance of Lodge Hill in the national context. This in our view means that the statements made in this section of the report to it being a recruit site and a key site for nightingales is conjecture.  It is also important to recognise that nightingale numbers may decline irrespective of what happens at Lodge Hill, for reasons way beyond (development management) control
31	Section 3, Temporary loss of Habitat – Delivery Lag, 5 <sup>th</sup> paragraph	It is relevant for all parties to acknowledge the requirement on Medway Council to spatially plan for, and meet, economic and housing growth needs in a sustainable way
32	Section 3, Practical Aspects of Compensatory Habitat Delivery, Table 2	With regard to natural regeneration taking 15-20 years or 10-12 years, it should be noted that at Lodge Hill, in the absence of management, scrub has encroached into grassland areas over the last 4 years (during which the site has been in active military use, up until c. Spring/Summer 2012), and is probably no more than 2 or 3 years away from being able to support nightingales. It is therefore possible to deliver scrub much more quickly that is suggested by the timescales set out in the report
33	Section 3, Practical Aspects of Compensatory Habitat Delivery, Table 2, final row	We are not sure how helpful this row is, i.e. combination and 6-8 years, given that planting mature scrub could be achieved within 5 years and natural colonisation at Lodge Hill has been much quicker than the 15-20 years/10-12 years stated
34	Section 3, Practical Aspects of Compensatory Habitat Delivery, 1 <sup>st</sup> paragraph, 5 <sup>th</sup> bullet point	This should cross-refer to the statement on DIO landholdings (see comment 28 above)
35	Section 3, Practical Aspects of	The focus should be on how the territories lost will be reprovided and should not seek to define any ratios; no preference was identified for restoration or

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	Compensatory Habitat Delivery, 1 <sup>st</sup> paragraph, 6 <sup>th</sup> bullet point	creation at the Stakeholder Meeting
36	Conclusion	The figures reflect a very conservative set of assumptions, and will need to be refined at the appropriate stage in the planning process
37	Conclusion, 1 <sup>st</sup> paragraph, 1 <sup>st</sup> bullet point	There is every reason to have confidence that a sound and effective offsetting strategy which is based upon the logic set out in the EBL report can be agreed with Medway Council and Natural England, and secured through the appropriate planning mechanisms
38	Conclusion, 1 <sup>st</sup> paragraph, 3 <sup>rd</sup> bullet point	The figures cannot, and should not, be construed as ‘absolutes’ (for example, there was no consensus that 300ha-400ha is ‘necessary’; this is the BTO’s view) – they reflect the current outputs based on a series of conservative assumptions that will be refined at an appropriate stage in the planning process, based on applying the logic based on the DEFRA metrics. The actual (absolute) provision will be secured through the appropriate planning mechanisms and will need to meet with the statutory CIL Regulation 122 tests
39	Appendix 2	<p>In addition to the comments set out above, which may apply to Appendix 2 too, our additional comments are as follows:</p> <ul style="list-style-type: none"> <li>• Section 1.3, 2<sup>nd</sup> paragraph should also refer to the Supplementary Environmental Information submitted to Medway Council in April 2012</li> <li>• Section 1.3, 2<sup>nd</sup> and 3<sup>rd</sup> paragraphs from the bottom, a refinement to the assumptions is needed at the next stage in the process, for the reasons explained above</li> <li>• Section 1.3, 3<sup>rd</sup> paragraph 3 – that Lodge Hill supports 1% of the national population of nightingales, and its eligibility as a SSSI, are now in doubt</li> <li>• Section 1.3, 4<sup>th</sup> paragraph, nightingales favour dense scrub, and we think that it is misleading to say that nightingales are found throughout the development site. For example, they are not found in areas of open grassland</li> <li>• Section 3.4.1, we don’t agree with the assumption of the loss of 325ha and will expect this to be reflected through a refinement of the process</li> <li>• First paragraph on page 35 (immediately after Table 3.13), we think that some degree of on-site habitat creation or retention for nightingales is suitable, consistent with the approach articulated within the outline planning application and forming the basis of engagement with all parties including Natural England. There is also the potential to provide off-site mitigation on the Holdfast land</li> <li>• Table 3.11 – it is not clear what multiplier has been used in the case of years to target condition</li> <li>• Based on the varying approaches to calculating the total amount of nightingale habitat present on the entire Lodge Hill site (total habitat present, i.e. woodland and scrub; total habitat being used by nightingales; and total habitat availability based on the presence of nightingale records) the total area is between approximately 135ha and 154ha. Based on habitat availability, the provision of 450ha-500ha of compensatory habitat equates to a ratio of between 1:3 and 1:4. Based on the loss of 106ha of nightingale habitat (woodland and scrub), this equates to a ratio of 1:5. Not even compensatory habitat schemes for Natura 2000 sites require this sort of compensatory uplift</li> <li>• See comment 7 with regard to the inclusion of ancient woodlands and grasslands in the calculations, including the assumption that all the woodlands are of high habitat condition. The addition of large areas of open managed grassland and amenity grassland alone adds nearly 100ha to the overall area of habitat creation required, and nearly 80ha to the area of habitat restoration required</li> <li>• Section 3.2.2 – it is not clear what general high environmental value means or how it affects the metrics. Is this the same as habitat condition? Scrub is assigned as medium distinctiveness and</li> </ul>



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		<p>woodland is high distinctiveness. For nightingale, this could be argued to be more appropriate the other way round. This would bring down the metric. If high environmental value means good then any habitat with a nightingale in it has been regarded as good. This must mean nearly all the scrub and woodland was assessed as good no matter what numbers are present. We also think that nightingale-only criteria should be applied</p> <ul style="list-style-type: none"><li>• There are a range of alternative (less cautious and more realistic) scenarios (see CBRE's letter to EBL dated 30<sup>th</sup> November 2012), which will need to be reflected through a process of refinement at the appropriate stage in the process</li></ul>
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